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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 298 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

CHALTHAN VIBHAG KHAND UDYOG SAHAKARI MANDALI LTD

Appearance:

MR MANISH R BHATT for Petitioner
MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE K.M.MEHTA

Date of decision: 20/12/1999

ORAL JUDGEMENT

(PER PATEL,J):

1. The Income Tax Appellate Tribunal, Surat has referred the following question for the opinion of this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled to deduction under section 80P(2)(a)(i) and under section 80P(2)(d) if the Income Tax Act, 1961?"

2. The assessee claimed certain benefits such as deduction of Rs.4,04,400/- under Section 80P(2)(a)(i) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") and Rs.1417/- under Section 80P(2)(d) of the Act in respect of interest received from members of cooperative societies and dividend and interest received from the cooperative societies. The Income Tax Officer by his order, dated 28.8.1981 rejected the claim of the Assessee. Being aggrieved by the order passed by the Income Tax Officer the assessee preferred appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) by his order dated 25.2.1983 confirmed the assessment order passed by the Assessing Officer for the reasons recorded in the order i.e. to say that the views taken in the earlier orders have been confirmed. The assessee approached the Tribunal and the Tribunal by its order, dated 19.1.1984 allowed the appeal. The Tribunal has placed reliance on the assessment order for the Assessment Year 1974-75. The revenue carried the matter further and the Division Bench of this Court in Income Tax Reference No.124/84 decided on 20.7.1998 answered the reference in favour of revenue and against the assessee. There the claim was made for deduction of Rs.2,89,855/- under section 8-P(2)(d)(i) and Rs.233/under section 80P (2)(d) of the Act. Considering the judgment of the Apex Court reported in the matter of CIT vs Kotagiri Industrial Cooperative Tea Factory Ltd reported in 224 ITR 604 it seems the court answered the question in favour of revenue and against the assessee. The question framed by the Division Bench reads as under:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee was entitled to deduction as cotemplated under section 80P & 80G of the Income Tax Act, 1961?"

The Division Bench hearing the said reference pointed out in para 4 as under:

"4. Almost in similar circumstances, the Supreme Court held that before considering the matter of deduction under section 80B(5) the Income Tax Officer rightly set-off the credit loss of earlier years in accordance with Section 42 of the Act and finding that the same exceeded, the ITO did not allow the deduction under section 80P of the Act. The principle laid down by the Supreme Court in Kotagiri Industrial Coop. Tea Factory Ltd will apply to the facts of the present case also."

3. Having gone through the judgment of the Apex Court and the decision of this court, we answer the reference in favour of revenue and against the assessee. No order as to costs.

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